

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 425 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AMBUBHAI KALABHAI DHODIA

Versus

HEIRS OF DECEASED BHIKHUBHAI V.J.MODI

Appearance:

MR VN BHAGODIA for Petitioner absent

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/03/2000

ORAL JUDGEMENT

#. The petitioner herein is the defendant-tenant against whom the respondent-plaintiff had filed Regular Civil Suit No. 63 of 1975 in the Court of the learned Civil Judge (JD) at Gandevi.

#. That one Bhikhubhai Modi was the original owner of the suit property and he died during the pendency of the suit. Said property is situated in Billimora town and the same was let to the defendant-tenant at a monthly rent of Rs. 10/-. The plaintiff had issued demand notice to the defendant-tenant as the defendant was in arrears of rent from 1.10.1970. The notice was issued on 6.1.1975 which was served on the defendant on 7.1.1975. By the said notice, the defendant was asked to pay arrears of rent and to vacate the suit premises. The defendant did not comply with the suit notice nor gave any reply to the same. The plaintiff therefore, filed the suit for getting a decree on the ground of arrears of rent.

#. The defendant appeared in the suit and filed written statement at exh.11. According to the defendant the monthly rent of the suit premises was Rs.4/- and that he paid the rent due to the plaintiff and therefore, according to him he was not in arrears of rent. By an amendment in the written statement, additional contention was taken that the plaintiff was not the only but there are other co-owners of the suit property and therefore, the suit was bad on account of non joinder of necessary parties.

#. That the Trial Court fixed the standard rent of the suit premises at Rs. 4/- per month. The Trial Court came to the conclusion that the defendant was in arrears of rent for more than 6 months and that he was not ready and willing to pay the rent. On the ground of arrears of rent, the Trial Court decreed the suit of the plaintiff for possession.

#. The defendant carried the matter further in appeal by way of filing Regular Civil Appeal No. 74 of 1980 in the District Court, Valsad at Navsari. The Appellate Court by its judgment dated 23.3.1982 dismissed the said appeal with costs and accordingly the decree for possession was confirmed by the Appellate Court.

#. The defendant-tenant had challenged the aforesaid order of the Appellate Court by filing the present Revision Application. The Revision Application is appearing on board since long but the learned advocate for the petitioner has not remained present at any time.

#. I have gone through the judgments of the courts below as well as the oral and documentary evidence

on record.

#. Before filing the suit the landlord had given notice under section 12(2) demanding the arrears of rent. Thereafter during the pendency of the suit since the defendant was not depositing any rent, an application under section 11(4) of the Bombay Rent Act was given for striking out the defence of the defendant-tenant.

#. The Trial Court , before passing the order under section 11(4) of the Bombay Rent Act, directed the defendant to pay all the arrears of rent with costs and for that purpose time was granted upto 15.12.1978. Said order was passed on 16.10.1978. The tenant was given two months time to pay up the arrears of rent and costs but the defendant did not pay anything in the court. Thereafter, the order of striking out the defence was passed. However, the tenant was permitted to cross examine the plaintiff. As a matter of fact, he had not raised any dispute regarding the standard rent on receipt of the suit demand notice and for the first time, a contention was taken in the written statement. As per the decision reported in 31 GLR 209 in the case of Arjun Khiamal Makhijani vs. Jamnadas C. Tuliani & ors. the dispute regarding standard rent is required to be taken within one month of the receipt of the suit notice and accordingly on the date of the filing of the suit, the defendant tenant was in arrears of rent for more than 6 months and therefore, the decree for possession was required to be passed under section 12(3)(a) of the Bombay Act.

##. The Appellate Court has however also considered that in view of the liability to pay the tax, if the case is said to be falling under section 12(3)(b) then also there was no month to month deposit. Therefore, the defendant-tenant was not entitled to protection under section 12(3)(b) of the Bombay Rent Act. As per the decision of the Supreme Court reported in 19 GLR 502 Ganpat Ladha vs. Sashikant Vishnu Shinde-the tenant, in order to avail of protection under section 13(3)(b) of the Bombay Rent Act, is required to deposit the rent regularly every month in the court. The Appellate Court has found in para 10 of its judgment that the tenant was not at all regular even in depositing the rent in the court. Before the Appellate Court it was argued by the learned advocate for the defendant-tenant that the defendant-tenant was a poor man and that he was not in a position to pay the rent and therefore, the default cannot be taken into consideration for awarding the

decree. The Appellate Court has found in concluding para 10 of its judgment that nothing is produced on record to substantiate the say that the defendant was in a poor financial condition. The Appellate Court found from the facts and circumstances of the case that the defendant was not ready and willing to pay the standard rent or permitted increases. In any case, so far as the defendant-tenant is concerned, he can protect his possession so long as he pays rent and if the tenant fails to pay the rent to his landlord then the consequences for non payment of rent as provided under the Bombay Rent Act is bound to follow. The argument advanced before the courts below on behalf of the defendant-tenant that the plaintiff has not joined other co-owners in the suit is of no consequence as any one co-owners can also maintain the suit for possession. Therefore, in view of the evidence on record as well as considering the provisions of law, the courts below are right in passing the decree for possession against the defendant-tenant. It cannot be said that the courts below have committed any error of law in decreeing the suit of the plaintiff for possession on the ground of arrears of rent. In that view of the matter there is no substance in this Revision Application and the Revision Application deserves to be dismissed. Accordingly this Revision Application is dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

However, looking to the fact the petitioner will have to find out alternative suitable accommodation, the petitioner is required to be given suitable time to vacate the suit premises. Mr. Vyas learned advocate for the plaintiff-landlord has no objection if reasonable time is granted to the petitioner. in the facts and circumstances I direct that the decree for possession shall not be executed till 31.3.2001 on condition that the petitioner shall file a usual undertaking before this court within 8 weeks from today. In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit property to any one and without obstructing in any manner he will hand over the vacant and peaceful possession to the respondent on or before 31.3.2001. The petitioner shall continue to pay the mesne profit regularly during the aforesaid period. If the petitioner fails to file the undertaking within 8 weeks from today or if the petitioner commits any breach of the said undertaking it will be open for the landlord to execute the decree for possession forthwith.

Since the learned advocate for the petitioner is not present, the office is directed to communicate the outcome of this Revision Application to the petitioner wherein the petitioner should be informed that he should file the aforesaid undertaking within 8 weeks before this Court.

(P.B.Majmudar.J)

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